



# Program Brief

## **“The Saddam Trial: Its Impact on International Criminal Law”**

Presentation by

**Jimmy GURULÉ**

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## Notre Dame ReSource: Law professor helped train Saddam's judge

By: Dennis K. Brown

Date: July 1, 2004

<http://newsinfo.nd.edu/content.cfm?topicId=5843>

A University of Notre Dame Law School professor who helped train the judges presiding over the arraignments of Saddam Hussein and other former Iraqi leaders says the proceedings "represent a victory for the rule of law."

Jimmy Gurulé cautioned, however, that the court must ensure that Saddam no longer use the defendant's chair as a soapbox.

"One of the principal challenges for the Iraqi Special Tribunal will be to prevent the court proceedings from becoming a stage for Saddam to communicate anti-American propaganda," Gurulé said. "He needs to be reeled in."

"The Iraqi court should prevent what has regrettably transpired during the proceedings conducted by the Ad Hoc Tribunal for the Former Yugoslavia."

Gurulé and nine other legal experts – including Supreme Court Justices Sandra Day O'Connor and Anthony M. Kennedy – trained 20 Iraqi judges in May at the Conference on the Rule of Law in Iraq at The Hague, Netherlands. The jurists, including the judge who presided over Saddam's arraignment today, comprise a tribunal that will determine legal charges against Saddam and other members of Iraq's overthrown Ba'athist government and eventually try them.

Gurulé conducted a conference workshop on judicial ethics and legal ethics. Other experts addressed topics such as the role of the judiciary in building constitutionalism, the role of judges as fact-finders, transitional justice, and the role of prosecutors.

Gurulé is a prominent scholar of international criminal law, terrorism, terrorist financing, and anti-money laundering. He has served in several public law enforcement positions, including as U.S. Treasury undersecretary for enforcement, where he was the point person in the hunt for the financiers of terrorism in the wake of the Sept. 11, 2001, terrorist attacks on America.



### **Law School professor to train judges for Saddam's trial**

By: Michael O. Garvey

Date: May 4, 2004

<http://newsinfo.nd.edu/content.cfm?topicId=5102>

Notre Dame Law School Professor Jimmy Gurulé is in The Hague, Netherlands, this week with nine other legal experts at the Conference on Rule of Law in Iraq.

The conference will provide training for some 20 Iraqi judges who will comprise a tribunal to determine legal charges against Saddam Hussein and other members of Iraq's overthrown Ba'athist government and eventually to try them.

Gurulé will conduct a conference workshop on judicial ethics and legal ethics. Other members of the international training team, which includes U.S. Supreme Court Justices Anthony M. Kennedy and Sandra Day O'Connor, will address such topics as the role of the judiciary in building constitutionalism, the role of judges as fact-finders, the role of prosecutors, and transitional justice.

Gurulé, who joined the Notre Dame law faculty in 1989, is a prominent scholar of international criminal law, terrorism, terrorist financing, and anti-money laundering. He has served in several public law enforcement positions, including as U.S. Treasury under secretary for enforcement, where he oversaw the Secret Service, the Customs Service, the Financial Crimes Enforcement Network, the Office of Foreign Assets Control, the Federal Law Enforcement Training Center, and the Bureau of Alcohol, Tobacco, and Firearms.

## U.S. GOVERNMENT RESOURCES

### Statements by U.S. Government Officials

- [Ask the White House](#)

**Christopher Reid, Regime Crimes Liaison**

December 21, 2005

(<http://www.whitehouse.gov/ask/20051221.html>)

...

Christopher Reid:

It is very important to the Iraqi people and the Iraqi government that the trials take place before a national court of Iraq before Iraqi judges. The Iraqis chose a national court with international assistance over an international tribunal. This was the right choice. The trials need to bring justice to the victims, tell the story of the atrocities, help Iraq come to terms with its past, and promote the rule of law in Iraq.

Under international law, a national court is preferable to an international tribunal, so long as the national court is willing and able to conduct the trials. An international court might feel to the Iraqi people as the world punishing Iraq, rather than like victims seeking justice from the perpetrators. And an international court would not be as accessible to the Iraqi people, and would not be able to help Iraq deal with its past or promote the rule of law. Right now the United States is providing the bulk of international assistance, but the trials are clearly an Iraqi process.

...

- [President Meets with World Health Organization Director-General](#)

The White House, December 6, 2005

(<http://www.whitehouse.gov/news/releases/2005/12/20051206-1.html>)

The President:

... And the American people must take notice of the fact that the people of Iraq are showing incredible courage in the face of this violence. After all, there was an election last January to put a transitional national government in place, then they voted on a constitution. And in a short period of time, they're going to be voting for a new government. They vote by the millions, which stands in stark contrast to the society in which they lived under the tyrant, Saddam Hussein, who, by the way, is now on trial, as he should be on trial.

I think his trial is indicative of the change that has taken place in the Iraqi society. In the old days, if Saddam and his cronies didn't like you, you didn't get a trial. You were just put to death or tortured. Today, there is a system, a judicial system in place that will give Saddam Hussein a chance to make his case in court, as well as giving those who have been tortured by Saddam Hussein a chance to step forth and provide witness to the brutality of this man. ...

- **Remarks at American Bar Association's Rule of Law Symposium**

**Secretary Condoleezza Rice**

Capital Hilton, Washington, D.C., November 9, 2005

(<http://www.state.gov/secretary/rm/2005/56708.htm>)

Secretary Rice:

... And in Iraq, we have committed approximately \$1 billion to train and equip the men and women of Iraq's new national police force to better protect and serve their fellow citizens. We have spent nearly \$400 million to strengthen the rule of law across all of Iraq, helping the Iraqi people to reform their system of legal education, to secure their country's many courtrooms and to frame their new democratic constitution. These judicial reforms are enabling the Iraqi High Tribunal to begin holding fair trials for the leaders of the Baathist regime, including Saddam Hussein himself. ...

- **Daily Press Briefing**

**Sean McCormack, Spokesman, U.S. Department of State**

Washington, D.C., October 17, 2005

(<http://www.state.gov/r/pa/prs/dpb/2005/55210.htm>)

...

QUESTION: Saddam is going on trial on Wednesday. I'm wondering if there's any concern within the Administration that this -- it's going to be a very highly charged event and might it unravel some of the, at least, tentative progress we've been seeing on bringing these ethnic groupings in Iraq together?

MR. MCCORMACK: Well, I think that the Saddam trial is going to be an important process for the Iraqi people in coming to terms and really closing a dark period, a dark chapter, in their history. Saddam Hussein, you know, from our perspective, is responsible for the brutal oppression of his own people and the deaths of tens of thousands, if not hundreds of thousands of people during his two-decade reign.

I have to emphasize that this is an Iraqi process and necessarily it should be and rightly so. It needs to be an Iraqi process because the Iraqi people deserve the opportunity to hold to account the person and people responsible for this era of brutality in their history.

In terms of the process, the process now as it is set up, we and the international community have been counseling and assisting the Iraqis as they prepare for this trial; but again, I have to emphasize this is an Iraqi process.

And I think if you take a look at it, the basic elements for a trial that meet international standards are there. You have a defendant that has access to defense counsel. You have an appeals process. You have a process that is then set up in accordance with Iraqi laws. Now, we'll see how this process moves forward. It's certainly our expectation and our hope would be that it moves forward in accordance with the laws and the regulations that have been put in place. ...

- **[President Attends International Republican Institute Dinner](http://www.whitehouse.gov/news/releases/2005/05/20050518-2.html)**

Renaissance Hotel, Washington, D.C., May 18, 2005

(<http://www.whitehouse.gov/news/releases/2005/05/20050518-2.html>)

The President:

... After the liberation of Iraq and Afghanistan, Americans from all walks of life stepped forward to help these newly liberated nations recover. Last summer a Lancaster, Ohio police officer named Brian Fisher volunteered to spend a year in Baghdad training Iraqi police. Brian says, "The Iraqi people have been under a dictatorship and now they are moving toward democracy, and I want to do something to help." What a fantastic spirit that Brian showed. But he's not alone. Last May, a Notre Dame Law School professor named Jimmy Gurulé helped train 39 Iraqi judges, some of whom will conduct the trials of Saddam Hussein and other senior members of his regime. Because of efforts of people like him and Brian, these trials will be fair and transparent.

These are ordinary Americans who are making unbelievable contributions to freedom's cause. And the spirit of the citizenship of this country is remarkable, and we're going to put that spirit to work to advance the cause of liberty and to build a safer world. ...

## **U.S. House of Representatives – Resolution**

### **H. Res. 534**

**In the House of Representatives, U.S.,**

December 16, 2005.

Whereas the United States is supportive of a sovereign governing body in Iraq, including the current government as well as future duly elected governments and appointed officials;

Whereas Iraq, as do all sovereign nations, has the duty and responsibility to indict, prosecute, and punish criminals within its jurisdiction;

Whereas the Iraqi Special Tribunal holds the sovereign power to prosecute criminals;

Whereas certain accused individuals have allegedly committed egregious crimes against humanity, genocide, and war crimes;

Whereas the people of a free and democratic Iraq deserve justice for the horrific crimes inflicted upon them; and

Whereas the Iraqi Special Tribunal is empaneled to bring swift and impartial justice for the people, victims, and the nation of Iraq: Now, therefore, be it

Resolved, That the House of Representatives fully supports an independent Iraqi judiciary and its efforts to serve the cause of justice in a free and democratic Iraq.

## **Washington File items**

**published by the Bureau of International Information Programs/ U.S.  
Department of State**

- [White House Report, October 19: Iraq, Bono, Penn Kemble](#)  
**Iraqi special tribunal will operate with basic legal standards**

October 19, 2005

(<http://usinfo.state.gov/mena/Archive/2005/Oct/19-849837.html>)

### **Tribunal For Saddam Hussein Case Set Up With Fair Standards**

The Iraqi special tribunal that is hearing the case against former Iraqi leader Saddam Hussein and his co-defendants was established with basic standards based on international law, White House press secretary Scott McClellan said.

Speaking to the press October 19, McClellan said those basic standards include the right to due process, access to legal counsel and appeals procedures.

“[I]t's important that they continue to move forward on those basic international standards that are expected for a fair trial,” he said.

Saying Hussein is “facing Iraqi justice” for atrocities he committed against the Iraqi people and against humanity during his presidency, McClellan said the trial “is an important step in building a democratic Iraq that is based on the rule of law” and “is another symbol that the rule of law is returning to Iraq.”

He added that the Bush administration hopes that the trial, scheduled to resume November 28, “will help bring some closure to Iraq's dark past for the Iraqi people.”

Iraq established the special tribunal to have jurisdiction to decide crimes against humanity, war crimes, genocide and other offenses, McClellan said, and both its judges and prosecutors “received extensive training in international law from experts in a number of coalition countries” including the United Kingdom and Italy.

The Transitional National Assembly, elected in January, also reviewed the tribunal’s statute, made amendments and approved its judges, he said.

The press secretary said the first case against Saddam Hussein and other leaders of the former regime concern the hundreds of villagers who were rounded up, tortured and executed in the Shi’ite village of Dujail in 1982.

“This is a time to keep the victims and their families in our thoughts. The Iraqi people, many Iraqis, suffered greatly under Saddam Hussein's brutal regime,” he said.

...

- **[Defense Department Report, Jul 18: Iraq Update](#)**

**Iraqi Special Tribunal articulates first charge against Saddam Hussein**

July 18, 2005

(<http://usinfo.state.gov/mena/Archive/2005/Jul/18-171194.html>)

Former Iraqi President Saddam Hussein will go on trial soon for his alleged role in the 1982 massacre of citizens in Dujail, site of a failed attempt to assassinate him.

Investigative judges with the Iraqi Special Tribunal have finished questioning Saddam Hussein about events in the Iraqi city, where more than 140 Iraqi civilians were executed in retribution for the attempted assassination.

Khaleel Aboud Aldelami leads Saddam Hussein's legal defense team. The former Iraqi leader could eventually face as many as 11 additional charges.

Also facing trial for crimes they allegedly committed in connection with the deaths on Dujail are Saddam Hussein's half-brother Barzan Ibrahim Hassan al-Tikrit, who served as a presidential adviser; former Iraqi vice president Taha Yassin Ramadan al-Jizrawi; and the former chief of the Revolutionary Court, Awad Hamad al-Badar al-Bender. These defendants are in Iraqi custody in Baghdad.

An opening date for the trial has yet to be announced, but press reports indicate that the trial could begin as early as September.

The chief judge of Iraq's Special Tribunal, Judge Raed Juhi, said an announcement on the trial's commencement could come within days.

The Iraq Special Tribunal was established by the Coalition Provisional Authority, which administered Iraq from May 2003 to June 2004. ...

- **[Iraqi War Crimes Tribunal Will Begin Soon, Prime Minister Says](#)**

**Proceedings expected to be an "open process," U.S. State Department says**

December 15, 2004

(<http://usinfo.state.gov/dhr/Archive/2004/Dec/16-138252.html>)

Ayad Allawi, Iraq's interim prime minister, announced on December 14 that a special war crimes tribunal to try Iraqis suspected of committing war crimes during Saddam Hussein's regime will begin this month. "With confidence, we can say that next week the trials of these individuals will start and the people's justice will be served," he said.

The tribunals are being run by Iraqis, with some financial and legal assistance from the international community, said State Department spokesman Richard Boucher. He added that even though efforts by the Iraqi government to compile evidence against suspects have not been widely publicized, the special war crimes tribunals are now moving into a phase where the public will become more informed of the proceedings against suspects.



"This is an Iraqi court, run by Iraqi judges, and they will move through those stages and set the timetable for the court proceedings." Boucher said. "We do expect it to be an open process [and] it will be more and more visible to the general public."

...

- **Former Iraqi Jurists Propose Plan for Post-Saddam Legal System**

**They seek "truth and reconciliation" approach to heal wounds**

April 5, 2003

(<http://usinfo.state.gov/dhr/Archive/2003/Oct/09-67306.html>)

Iraqi jurists in exile have outlined their vision of a post-Saddam Hussein Iraq governed under the rule of law, and say they stand ready and eager to help implement the required changes.

For the process to succeed, they say, it is vital for Iraqis themselves to take the lead, with international help provided where needed.

Four of the lawyers involved in preparing a detailed 700-page draft of their proposals -- a joint effort by the London-based Iraqi Jurist Association and the Working Group on Transitional Justice affiliated with the State Department's Future of Iraq Project -- presented their views at a press briefing April 4.

The briefing was held at the Washington hotel where they had just taken part in a two-week-long colloquium on international law, human rights and rule-of-law principles sponsored by the U.S. Departments of Justice and State, the fourth such workshop held in recent months.

The 32 workshop participants came from locations around the world, but most live in the United States and Great Britain. The four who took part in the press briefing included two leaders of the London-based organization, one jurist now living in Australia, and an Iraqi-American lawyer from Los Angeles.

The jurists set out a plan for a three-tiered judicial system to prosecute criminal cases, and particularly those arising out of the abuses of the Iraqi regime of Saddam Hussein.

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**CRS REPORT**  
**Published by the Congressional Research Service/  
Library of Congress**

- **Options for Trying Saddam Hussein for International Crimes**  
updated April 6, 2004

**CRS Report for Congress**

Received through the CRS Web

**Summary:**

While U.S. courts do not appear to have jurisdiction under U.S. law for most of the crimes alleged to have been committed by Saddam Hussein, several options are available for prosecuting him for crimes against humanity, genocide, and war crimes. Precedents include national courts and national and international military tribunals similar to those used in the aftermath of World War II, an international ad hoc tribunal similar to those set up by the U.N. to adjudicate atrocities in the former Yugoslavia and Rwanda, and “hybrid” tribunals — which combine national and international elements. The Bush Administration supports prosecution by a special Iraqi court. Under the Geneva Conventions, if the United States were to turn Hussein over to the Iraqi interim government or another detaining power, it may remain responsible for assuring that the receiving power observe the safeguards in the Conventions.

**USEFUL WEBSITES**

**Global Policy Forum**

- [The Iraq Tribunal: Trying Saddam Hussein and Other Top Baath Leaders](http://www.globalpolicy.org/intljustice/iraqindex.htm)  
(<http://www.globalpolicy.org/intljustice/iraqindex.htm>)
- [Saddam's Trial: Names and Places](http://www.globalpolicy.org/intljustice/tribunals/iraq/2005/1128list.htm), Associated Press, November 28, 2005  
(<http://www.globalpolicy.org/intljustice/tribunals/iraq/2005/1128list.htm>)
- [A Comparison of Saddam, Milosevic Trials](http://www.globalpolicy.org/intljustice/tribunals/2005/1020saddamslobo.htm), by Dusan Stojanovic,  
Associated Press, October 20, 2005  
(<http://www.globalpolicy.org/intljustice/tribunals/2005/1020saddamslobo.htm>)

## **Iraqi Special Tribunal**

- [Index page](http://www.iraqispecialtribunal.org/)  
(<http://www.iraqispecialtribunal.org/>)
- [The Statute of the Iraqi Special Tribunal](http://www.iraqispecialtribunal.org/en/about/statute.htm)  
(<http://www.iraqispecialtribunal.org/en/about/statute.htm>)
- [About the Court: IST at a Glance](http://www.iraqispecialtribunal.org/en/about/overview.htm)  
(<http://www.iraqispecialtribunal.org/en/about/overview.htm>)

The Iraqi Special Tribunal was established according to the statute no. (1) dated 10.12.2003 enacted by the Iraqi Governing Counsel. The tribunal was recognizing the wishes of the Iraqi people to establish a legal instrument suitable for proving their rights and uncovering the truth about what happened during the past years.

The statute of the Iraqi Special Tribunal was drafted by the legal committee of the governing Counsel and followed significant consultation with the legal staff and other experts in the coalition provisional authority and other government officials of countries connected with the coalition. Some of these experts had significant expertise in the field of prosecution of war crimes. In addition, the drafters of the statute consulted international experts in the field, as well as some non-governmental organizations. Finally, the drafters of the statute consulted Iraqi lawyers and judges who provided advice on Iraqi criminal law and the Iraqi criminal procedures law.

The intention of the drafters of the statute was to attempt insofar as possible to comply with international standards of due process of law and to focus on the crimes committed under international law, such as genocide, war crimes and crimes against humanity. At the same time, the drafters of the statute had to take into account the wishes of the Iraqi people, namely that this process needed to substantially be an Iraqi process. The governing Counsel further concluded that, with international assistance, the Iraqi judicial process would be able to pursue an accountability process.

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Please visit the homepage of the U.S. Embassy Vienna, Austria at: <http://www.usembassy.at>



The program page on **“The Saddam Trial: Its Impact on International Criminal Law”** will be available at: <http://www.usembassy.at/en/embassy/photo/gurule06.htm>

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